UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 16

SECURITY CONSULTANTS GROUP, INC.

Employer,

Case No. 16-RC-10961

and

UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA INTERNATIONAL UNION

Petitioner

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) and its LOCAL UNION NO. 48 Intervenor

INTERVENOR SPFPA'S EXCEPTIONS TO REGIONAL DIRECTOR'S REPORT ON OBJECTIONS

Intervenor International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local Union 48 file these Exceptions to the Regional Director's Report on Objections. In her Report, the Regional Director recommends dismissing the Objection.

On October 15, 2010, the SPFPA timely filed an Objection to the election in this case.

On October 22, 2010, the SPFPA timely filed its statement of evidence in support of the Objection. Nothing then transpired for the next six weeks. No hearing was scheduled, no contact from the Regional office to the SPFPA regarding the quality or quantity of evidence.

Rather, after more than six weeks delay without explanation, and without scheduling a hearing to take evidence, on December 7, 2010 the Regional Director issued her Report on Objections, recommending the objection be dismissed.

In support of its Objection, the SPFPA identified to the Region witnesses who would testify at the hearing and the content of their expected testimony. Specifically, the SPFPA stated that a witness will testify that in July 2010 he was informed by SEIU representatives that the UGSOA had disclaimed interested in one of its largest bargaining units, located in Washington DC, in favor of the SEIU representing the unit, in exchange for a payment by the SEIU to the UGSOA of between \$200,000 and \$225,000. The SPFPA also stated that a witness will testimony as to an agreement reached between the UGSOA and the SEIU. The witness will provide testimony with respect to the UGSOA's financial condition in 2010 and the effect a substantial payment from the SEIU to the UGSOA would have on the UGSOA's ability to continue as a functioning labor organization. (Subsequent to the October 22, 2010 proffer of evidence, this putative witness, a former UGSOA Executive Board member, testified in Case 31-RC-8837 (Paragon Systems Inc.) that in or about June 2010 the UGSOA received \$225,000 from the SEIU in exchange for disclaiming interest in the Washington, D.C. bargaining unit.)

In addition, the SPFPA identified for the Region documentary evidence that the SPFPA would introduce at the Objections hearing, including UGSOA LM-2 forms and materials filed in a lawsuit brought by the UGSOA against the SEIU in 2009, resolved in July 2010. The documents will establish that the UGSOA was in a financial crisis during the period of time leading to its agreement with the SEIU. The 2009 UGSOA LM-2 report shows that as of December 31, 2009, the UGSOA had net assets of only \$97,564.00, 63% less than the previous year. In 2009 the UGSOA spent more than \$150,000 more than it took in; at that rate, the UGSOA would run out of money in the early summer, 2010 (which is when the UGSOA received the payment from the SEIU.) Thus, receiving at least \$200,000 from a non-guard union

was of vital importance to the UGSOA, permitting it to continue in business as a labor organization.

In addition to bleeding money, the UGSOA is bleeding dues paying members. The 2008 LM-2 shows 9,150 dues paying members. By December 31, 2009, that number had dropped precipitously, to only 5,935. This, of course, was before the UGSOA then disclaimed interest in the hundreds of members in the unit in question.

Although only 5,935 members paid dues as of December 31, 2009, the UGSOA represented a total of 11,425 of members/non-members/fee payers. (There were 594 agency fee payers and 4,896 unit members who were not members or fee payers.) Thus, as of December 31, 2009, the UGSOA had net assets of only \$8.54 for each unit member it was required to represent.

Additionally, the SPFPA will introduce documents from the August 2009 lawsuit the UGSOA filed against the SEIU alleging it was under attack because it refused to merge into the SEIU. In the lawsuit the UGSOA claimed that it would suffer considerable and irreparable harm unless the SEIU was enjoined from attacking the UGSOA. The UGSOA spent considerable sums prosecuting the lawsuit, twice bringing motions seeking injunctive relief and twice forcing NLRB hearings on decertification petitions the SEIU filed in the unit in question. All the while the UGSOA was bleeding money, with a significant portion of their expenditures going for attorney fees (including nearly \$380,000 paid in 2009). This does not include another \$41,236 owed as of December 31, 2009 but not paid to the Washington, D.C. law firm handling the lawsuit against the SEIU.

The Regional Director essentially finds that this issue was litigated prior to the election and thus cannot be raised again. In reaching this conclusion, the Regional Director ignores the

serious due process and procedural failings in the pre-election procedure. 1 The Regional Director ignores that fact that the pre-election hearing was closed prematurely, precluding the SPFPA from producing as a witness the former UGSOA Executive Board member.² Further, in her Decision and Direction of Election, the Regional Director criticizes the SPFPA for failing to produce documents from the UGSOA lawsuit against the SEIU, ignoring the fact that the SPFPA counsel was out of town on vacation when required by the Region to submit a written position statement in a period of 4 hours.³ Yet in her Report on Objections the Regional Director simply relies on her prior Decision and ignores that the SPFPA was precluded from submitting the evidence discussed above into the record that resulted in that Decision.

Section 9(b)(3) is a statutorily imposed requirement that prohibits that Board from certifying non-guard unions from representing units of guards. The Regional Director seemingly believes that evidence that a non-guard Union may be certified by the Board to represent a unit of guards should be ignored because of some theory of waiver or failure to present evidence during an earlier proceeding. The Act does not permit procedural exceptions to permit the Board to certify a non-guard union in a guard unit. In fact, the Board permits a party to raise the issue of 9(b)(3) status at any time, including after a certification has issued.⁴ There is no basis for refusing to permit the SPFPA from raising the issue in the Objection filed.

¹ See the SPFPA's September 14, 2010 Request for Review.

² The former Executive Board member resigned from the UGSOA the day after the July 28, 2010 hearing date. Subsequently the Regional Director was informed by the SPFPA that it had located this witness and was prepared to produce him, but received no response from the Region. To the contrary, the Regional Director in her Decision and Direction of Election - which criticized the SPFPA for failing to produce witnesses or other evidence - did not even discuss the SPFPA's proffer to produce this witness at a resumed hearing.

³ See September 14, 2010 Request for Review for details of how SPFPA counsel on vacation, without access to the case file, was forced to prepare the statement in but a few hours but then the SPFPA was criticized by the Regional Director for not producing the documents identified in that statement. In that statement, the SPFPA identified the documents and the case number of the lawsuit, which is available to the Region and the public through PACER. The Region could have easily accessed the court case file and obtained the documents.

⁴ See, e.g., Bonded Armored Carrier, 195 NLRB 346 (1972), where the Board stated that in the event a union is certified to represent guards is shown to have accepted material assistance from a non-guard union, the Board will entertain a motion to revoke the certification.

The continuation of the lawsuit against the SEIU could force the demise of the UGSOA as it was running out of money including money to pay the attorney fees to process the lawsuit. Thus, any agreement ending the lawsuit demonstrates the control the SEIU had over the UGSOA and the ability it had to force the UGSOA to do what the SEIU wanted, including disclaiming

interest in the unit in question.

The evidence that the SPFPA will introduce will establish that the UGSOA buckled to the demands of a non-9(b)(3) union (the SEIU), selling members to the SEIU for a substantial sum of money that permitted it, at least temporarily, to escape from its pending financial demise. The evidence will show that during the critical period, and continuing to date, the UGSOA has benefited from payment(s) it received from the SEIU. Although the Board has permitted new guard unions in their formative stages to receive limited assistance from non-9(b)(3) unions, there is no Board decision permitting a mature and established 9(b)(3) union facing financial ruin

For the reasons stated above, the SPFPA requests that the Board reject the Regional Director's Report on Objections and rather direct that a hearing be held to permit the SPFPA to produce evidence in support of the Objection.

from receiving substantial financial support in the circumstances of the instant case.

espectfully submitte

Scott A. Brooks

Gregory, Moore, Jeakle & Brooks

Dated: December 21, 2010

Certification of Service

Copies of the foregoing Petitioner's Request for Review have been immediately served upon the following by first class mail or as otherwise stated:

Robert Kapitan, counsel for UGSOA Via e-mail

Brad Odum Security Consultants Group, Inc. 102 Mitchell Road, Suite 100 Oakland Ridge, TN 37830

Martha Kinard, Regional Director Via e-mail

Scott A. Brooks

Dated: December 21, 2010